IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 906 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUMBHAR GANESHBHAI JIVABHAI

Versus

STATE OF GUJARAT

Appearance:

MR CHETAN K PANDYA for MR SV RAJU for Petitioners

MS MANISHA LAVKUMAR, AGP for Respondents

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 21/03/2002

ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. In this Special Civil Application under Article 226 of the Constitution of India, the petitioners pray for issue of writ directing Respondent No.3 to pay to the petitioners compensation @ Rs. 5/- per sq. meter as is given to other claimants and to pass all other incidental and consequential orders like award of interest, solatium, etc.

2. The say of the petitioners is that a Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the "Act") was published on 13.11.1980 covering the lands of the petitioners along with the other lands of village Pandava, Tal. Vadgam, Dist. Banaskantha for the purpose of Mukteshwar Reservoir Project; that thereafter Notification under Section 6 was published on 31.3.1993; that respondent No.3 passed Award dated 26.3.1985 under Section 11 of the Act in Land Reference Case No.11/80 awarding compensation at the rate of Rs.3/- per sq. meter. That the other claimants covered under the said Notification and the award under Section 11 of the Act requested for reference under Section 18 of the Act whereby the Reference was made to the District Court, Banaskantha. The petitioners did not make request for a reference to the District Court as far as the compensation determined by the Land Acquisition Officer. That the Joint District Judge disposed of the References partly allowing the same granting the compensation at the rate of in all Rs.6/- per sq. meter including Rs.3/- awarded by the Land Acquisition Officer. That the High Court in Appeal reduced the compensation to, in all, Rs. 5/- instead of Rs.6 determined by the Reference Court.

The State Government carried the matter unsuccessfully to the Supreme Court.

3. The say of the petitioners is that the petitioners should also be awarded compensation at the rate of in all Rs. 5/- per sq. meter, as awarded to the other claimants who had filed References under Section 18 of the Act, by virtue of the provisions contained in Section 28A of the Act.

4. That the petitioners submitted application under Section 28A of the Act on 25th May, 1993. Ms. Manisha Lavkumar, AGP has shown to us the xerox copy of the original application, which also suggests that the application was filed on 25.6.1993, whereby the petitioners prayed for the compensation at the rate of Rs. 5/- per sq. meter as awarded under Section 18 by

the Reference Court to other claimants, who had requested for redetermination of compensation under Section 26 to the Land Acquisition Officer.

5. The Deputy Collector, Land Acquisition & Rehabilitation, Cipu Yojana, Palanpur, vide his order dated 27.8.1997 rejected the application under Section 28A of the Act, submitted by the petitioners stating that in Pandava Land Acquisition Case No.11/80, the Notification under Section 4 was published on 13.10.1983 and as explained/clarified below Section 28A of the Act, the benefit under Section 28A of the Act would be available only to those cases wherein the Notifications under Section 4 of the Act has been issued subsequent to 24.9.1984 and the provisions of Section 28A of the Act would not be applicable to the cases wherein the Notification under Section 4 of the Act has been published prior to 24.9.1984, and as in the instant case, the Notification under Section 4 of the Act has been published on 13.10.1983, i.e. prior to 24.9.1984, Section 28A is not applicable to the present case.

6. Mr. Chetan Pandya, learned Advocate for the petitioners relying on the decision in the case of JOSE ANTONIO CRUZ DOS R. RODRIGUESE AND ANOTHER vs. LAND ACQUISITION COLLECTOR AND ANOTHER, reported in (1996) 6 SCC 746, has contended that the limitation of three months for making application for redetermination of compensation under Section 28A of the Act should be computed from the date of the award of Reference Court on the basis of which redetermination is sought and not the order of the appellate court in the appeal under Section 54 of the Act, against the award of the Reference Court.

Section 28A of the Act reads as under :

(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court.

PROVIDED that in computing the period of three months within which an application to the Collector shall be made under his sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.

7. A plain reading of sub-section (1) of Section 28A reproduced above suggests that it applies only to those claimants who had failed to seek a reference under Section 18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the Court in the Reference under Section 18 of the Act, and application in this behalf has to be made to the Collector within 3 months from the date of the award. Thus, only those claimants who had failed to apply for a Reference under Section 18 of the Act are conferred this right to apply to the Collector for redetermination and not only sought a reference under Section 18 who had also filed an appeal in the High Court against the award made by the Reference Court. Benefit of redetermination of amount of compensation under section 28A can be availed of on the basis of any one of the awards that has been made by the Court after coming into force the Section 28A provided that the applicant seeking such benefit makes an application under Section 28A within the prescribed period of three months from the making up of the award on the basis of which redetermination is sought.

8. In the instant case, the Reference Court passed the order under Section 18 of the Act on 31.3.1993. The application under Section 28A of the Act by the claimants, as seen above, has been filed on 25.6.1993

i.e. within three months from the date of the award by the Reference court.

9. It may be appreciated that the right to apply under Section 28A would accrue on the date of award by the Reference Court on the basis of which redetermination is sought by the other claimants because it is the enhancement of the compensation awarded by the Land Acquisition Officer in the award under Section 11 of the Act, and the request for redetermination was made to the Reference Court by the claimants and the Reference Court redetermined the compensation fixing at Rs.6/- per sq. meter in all which was reduced to Rs. 5/- per sq. meter by the High Court in Appeal under Section 54 of the Act. Thus, the right to request for redetermination under Section 28A of the Act would be on the basis of the redetermination of the compensation by the Reference Court, which is in the instant case 31.3.1993.

10. In our opinion, the question raised in this application is fully covered by the decision of the Supreme Court in the case of JOSE ANTONIO CRUZ DOS R. RODRIGUESE (supra).

11. In the result, this Spl. Civil Application deserves to be granted. Respondent No.2 is directed to decide the application submitted by the petitioners on 26.5.1993 under Section 28A of the Act giving effect to the decision of the Reference Court dated 31.3.1993 redetermining the compensation at Rs. 6/- per sq. meter, which is reduced to Rs. 5/- per sq. meter by the High Court in Appeal under Section 54 of the Act, with all statutory benefits available under the Act to the petitioners as made available to the other claimants covered under the same Notification under Section 4 of the Act, within three months from the date of receipt of writ of this order.

12. In the result, this Petition is granted. Rule is made absolute accordingly. No order as to costs.

(N.G. Nandi, J.)

(J.R. Vora, J.)

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